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Erratum

On page 255 which read: "New York Law section 4 (6)" should have read: "New York Tax Law section 4(6)"

TAX EXEMPTION ALLOWED FOR PORTION OF HOSPITAL PREMISES SUPPLIED TO HOSPITAL PERSONNEL

St. Lukes, a hospital located in New York City derives about seventy-five per cent of its annual revenue from fees paid by patients. Only capital investments and annual deficits are met by voluntary charity. St. Lukes also owns and rents ten apartment buildings, situated in the immediate vicinity of the hospital, which provide additional revenue. The apartments are rented to hospital personnel, as well as outsiders. St. Lukes brought a petition claiming a tax exemption on this realty under New York Law section 4(6) and New York Real Property Tax Law section 420(1), (2) and (5). Petitioner alleged that it was a "free public hospital," since patients were admitted without discrimination. It was further alleged that these apartments were being used for hospital purposes because: (1) all income therefrom was applied exclusively to the maintenance of the institution; and (2) the apartments were rented exclusively to hospital personnel as they became vacated by other tenants. *Held*, (1) St. Lukes was not a "free public hospital" but merely a hospital, as defined in the statute; but (2) supplying of living accomodations for hospital personnel and their immediate families was a hospital purpose entitling St. Lukes to tax exemptions for the portions occupied by such personnel. *Saint Lukes Hosp. v. Boyland*, 12 N.Y.2d 135, 187 N.E.2d 769, 237 N.Y.S.2d 308 (1962).

The traditional justification for tax exemptions for charitable organizations is that these organizations perform functions and render services which relieve the state of financial burden. For example, where the activities of an organization tend to decrease disorder, and thus conserve the time of the police force, tax exemptions are allowed because the State is directly benefited.[1] The organization's activities are said to compensate for any financial loss the State may incur in allowing an exemption. Justification for these exemptions extends beyond mere monetary considerations. Where the State has a distinct interest in the care and maintenance of a certain class of citizens, exemptions are granted even though the State, itself, has no specific duty to render these services, on the theory that the organization is performing a public welfare function.[2] Exemptions are also based on the theory that charitable organizations perform services that are so important to society that such treatment is justified.[3] It can be readily seen that an organization which: (1) relieves the State of a specific function; (2) serves society at large, or selected portions of the public-at-large in a welfare capacity; or (3) engages in an activity of great importance to society so as to justify exemption will be exempt since it becomes quasi-public in character. To constitute a public charity an organization must confer

1. National Navy Club v. New York, 122 Misc. 89, 92, 203 N.Y. Supp. 114, 117 (Sup. Ct. 1923).
2. Webster Apartments v. New York, 118 Misc. 91, 93, 193 N.Y. Supp. 650, 651 (Sup. Ct. 1922).
3. People *ex rel.* Near East Foundation v. Boyland, 201 Misc. 855, 858, 106 N.Y.S.2d 736, 740 (Sup. Ct. 1951).

benefits on indefinite persons (*i.e.*, a class of persons).[4] It is then public in nature even though its benefits are extended to members of a specific organization. But where certain and defined individuals are served the organization is private and taxable. While it has been maintained that these statutory exemptions are a function of the administrative policy of the State, and not a fundamental right based on the organization's public character,[5] it is not the function of an administrative officer to determine where the line shall be drawn which divides the field subject to taxation from the field where no tax has been imposed.[6] This is primarily a legislative function, and the right to these exemptions is "fundamental" in the sense that the legislative policy vindicating them can be traced back for one hundred seventy-five years.[7] The statutory basis for these exemptions is contained in the New York Real Property Tax Law section 420 which provides that "real property owned by a corporation or association organized exclusively for the moral or mental improvement of men and women, or for . . . charitable [or] benevolent . . . purposes . . . shall be exempt from taxation. . . ." The test of charitable purpose is factual as determined from the statutory provisions; and is applied to the purposes of the organization as enumerated in the corporate charter.[8] Under this test institutions organized for private profit are not within the statute.[9] Trusts created to form charitable corporations are within the statute, except where the trustee has the power to donate trust money to private institutions or power to hold the proceeds for an individual.[10] The statute encompasses many varied organizations,[11] in addition to such standard charitable organizations as religious groups and hospitals.[12] Even unorthodox organizations whose methods are not generally accepted in their field may be included.[13] Further, these corporations must be organized

4. Cornell University v. Thorne, 184 Misc. 630, 635, 57 N.Y.S.2d 6, 11 (Sup. Ct. 1945).

5. Application of Thomas S. Clarkson Memorial College of Technology, 274 App. Div. 732, 87 N.Y.S.2d 491 (3d Dep't 1949), *aff'd*, 300 N.Y. 595, 89 N.E.2d 882 (1949).

6. Good Humor Corp. v. McGoldrick, 289 N.Y. 452, 455, 46 N.E.2d 881, 882 (1943).

7. L. 1779 ch. 21, as republished by L. 1885 ch. 341; Vol. 1, 185, 190 (Weed Parsons and Co. Albany, 1886).

8. People *ex rel.* Untermeyer v. McGregor, 295 N.Y. 237, 66 N.E.2d 292 (1946).

9. People *ex rel.* Bank For Savings in City of New York v. Miller, 84 App. Div. 168, 82 N.Y. Supp. 621 (3d Dep't 1903).

10. Butterworth v. Keeler, 219 N.Y. 446, 114 N.E. 803 (1916); Matter of Shattuck, 193 N.Y. 446, 86 N.E. 455 (1908); *In re* Graves, 34 Misc. 677, 70 N.Y. Supp. 727 (Surr. Ct. 1901); Op. Att'y Gen. 595 (1913).

11. People *ex rel.* Thomas S. Clarkson Memorial College v. Haggett, 300 N.Y. 595, 89 N.E.2d 882 (1949); People *ex rel.* Trustees of Masonic Hall and Asylum Fund v. Miller, 279 N.Y. 137, 18 N.E.2d 8 (1938); People *ex rel.* Bleakley v. Sexton, 265 N.Y. 480, 193 N.E. 280 (1934); Matter of Watson, 171 N.Y. 256; 63 N.E. 1109 (1902); People *ex rel.* Andrews v. Cameron, 140 App. Div. 76, 124 N.Y. Supp. 949 (3d Dep't 1910), *aff'd*, 200 N.Y. 585, 94 N.E. 1097 (1911); People *ex rel.* Pierpont Morgan Library v. Miller, 177 Misc. 144, 29 N.Y.S.2d 445 (Sup. Ct. 1941); National Navy Club v. New York, 122 Misc. 89, 203 N.Y. Supp. 114 (Sup. Ct. 1923); Webster Apartments v. New York, 118 Misc. 91, 193 N.Y. Supp. 650 (Sup. Ct. 1922). Op. Att'y Gen. 395 (1905).

12. People *ex rel.* Watchtower Bible and Tract Society Inc. v. Haring, 8 N.Y.2d 350, 170 N.E.2d 677, 207 N.Y.S.2d 673 (1960); People *ex rel.* Doctors Hospital v. Sexton, 267 App. Div. 736, 48 N.Y.S.2d 201 (1st Dep't 1944).

13. People v. Haring, *supra* note 12; People *ex rel.* Johnson O'Connor Research Foundation v. Tax Comm'rs, City of New York, 96 N.Y.S.2d 36 (Sup. Ct. 1950).

and existing under New York law,[14] although their activities need not be confined to New York.[15] The right to an exemption is determined on July 1st each year and property exempt on that date is exempt for the subsequent year even though ownership is transferred to one not entitled to an exemption.[16]

Once it has been established that a corporation is an organization within the statute, the organization must also show that the property is, in fact, being used for a corporate purpose. This test is based upon the facts surrounding the usage of the property. Exemptions are accorded for property usages which are necessary and incidental functions of the particular organization. Exemptions are not accorded for collateral activities[17] except where these activities are vital to the fulfillment of corporate purposes. The necessary function requirement is ignored when non-income producing property is not in actual use, provided improvements to fulfill such a function are in good faith contemplated, or in progress.[18] In cases where ninety-five per cent of the property is used for a necessary function, the courts won't quibble about the extra five per cent which provides a collateral source of revenue.[19] Where the State will provide the same service free, a property use in lieu of this service, is deemed unnecessary.[20]

Use of organization property as residences for officials is deemed not necessary in the case of religious groups, especially where the residence is larger than the church.[21] Residences provided for organization members are exempt, but when non-members are allowed the use of the same facilities, the courts deem this a collateral usage and the property is taxed.[22] Educational institutions are allowed exemptions for faculty residences situated on the campus proper or separate, even when the residences are occupied by a professor's family, or by retired professors.[23] Residences for hospital personnel are accorded the same

14. Hunter College Student Social Community and Religious Clubs Association v. City of New York, 63 N.Y.S.2d 337 (Sup. Ct. 1946).

15. People *ex rel.* Near East Foundation v. Boyland, 201 Misc. 855, 106 N.Y.S.2d 736 (Sup. Ct. 1951).

16. 5 Op. N.Y. State Compt. 334 (1949).

17. People *ex rel.* Unity Congregational Society of N.Y. v. Mills, 189 Misc. 774, 71 N.Y.S.2d 873 (Sup. Ct. 1947); People *ex rel.* Sisters of Mercy v. Nowles, 34 Misc. 501, 70 N.Y. Supp. 277 (Sup. Ct. 1901); Matter of Albany Memorial Hosp., 34 N.Y. St. Dep't 25 (1934).

18. Board of Foreign Missions v. Board of Assessors, 244 N.Y. 42, 154 N.E. 816 (1926); see also Matter of Mary Immaculate School, 188 App. Div. 5, 175 N.Y. Supp. 701 (2d Dep't 1919).

19. People *ex rel.* Watchtower Bible and Tract Society Inc. v. Haring, 8 N.Y.2d 350, 170 N.E.2d 677, 207 N.Y.S.2d 673 (1960).

20. N.Y. Catholic Protectory v. City of N.Y., 175 Misc. 427, 23 N.Y.S.2d 789 (Sup. Ct. 1940).

21. People *ex rel.* Society of the Free Church v. Feitner, 168 N.Y. 494, 61 N.E. 762 (1901); Congregation Gedulath Mordecai v. New York, 135 Misc. 823, 238 N.Y. Supp. 525 (Munic. Ct. N.Y.C. 1929).

22. People *ex rel.* Young Men's Association for Mutual Improvement in the City of Albany v. Sayles, 32 App. Div. 197, 53 N.Y. Supp. 67 (3d Dep't 1898), *aff'd*, 157 N.Y. 677, 51 N.E. 1093 (1898); Y.W.C.A. v. New York, 137 Misc. 321, 243 N.Y. Supp. 294 (Sup. Ct. 1928).

23. People *ex rel.* Thomas S. Clarkson Memorial College v. Haggett, 300 N.Y. 595, 89 N.E.2d 882 (1949); Matter of Pratt Institute v. Boyland, 16 Misc. 2d 58, 174 N.Y.S.2d 112 (Sup. Ct. 1958).

liberal treatment.[24] In the case of education and hospital organizations as opposed to religious groups, the courts are more liable to allow exemption for necessity, since in the former, personnel within the organization are more numerous, than in the latter where few personnel operate the entire organization. In effect, in the case of residences, whether property is being used for a necessary corporate purpose depends on: (1) the size of the organization; (2) the number of personnel and officials within the organization; (3) the number of members; (4) whether the organization requires nearby residences; and (5) whether nearby residences are actually available.

The reasoning in the instant case may be divided into two key portions. First the Court reasoned that the present day relevant Tax Law sections are substantially the same as the original Tax Law passed in 1896. Therefore, to define a "free public hospital," conditions as they existed in 1896 must be examined. Cases decided under the original statute held that a "free public hospital" was one which: (1) received no financial aid from New York; (2) provided gratuitous treatment exclusively; and (3) was maintained by voluntary charity.[25] The financial structure of St. Lukes showed that: (1) only capital investments and annual deficits were financed through voluntary charity; and (2) seventy-five per cent of the hospital's revenue was derived from fees charged to patients. The Court then concluded that St. Lukes was not a free public hospital because it charged its patients. St. Lukes Hospital failed to meet the last two of these qualifications, particularly that of providing free care and thus is not a "free public hospital." The test of a hospital purpose is whether it is reasonably incident to the major purpose of the institution. The court refers to a relevant case which held that the supplying of living accomodations for hospital personnel is hospital purpose. In that case, the court took judicial notice of the fact that this practice is customary and necessary to prevent a rapid turnover of nurses and technicians.[26] The court then alludes to the fact that it is normal to allow tax exemptions for residences provided for educational personnel and their families.[27] Payment of rent by personnel is not relevant. Nor is it important whether the buildings are separate or contiguous to the hospital.[28] Real Property Tax Law section 422 (which provides

24. Matter of DeMott v. Notey, 3 N.Y.2d 116, 143 N.E.2d 804, 164 N.Y.S.2d 398 (1957).

25. Matter of Montefiore Home v. Prendergast, 159 App. Div. 644, 144 N.Y. Supp. 953 (1st Dep't 1913), *aff'd*, 211 N.Y. 549, 165 N.E. 1090 (1914); Western Dispensary of N.Y. City v. Mayor of New York, 24 Jones & S. 361 (Super. Ct. N.Y.C. 1889).

26. Matter of DeMott v. Notey, 3 N.Y.2d 116, 143 N.E.2d 804, 164 N.Y.S.2d 398 (1957).

27. Matter of New York University v. Temporary State Housing Rent Comm'n, 304 N.Y. 124, 106 N.E.2d 44 (1952); People *ex rel.* Thomas S. Clarkson Memorial College v. Haggett, 300 N.Y. 595, 89 N.E.2d 882 (1949); Matter of Pratt Institute v. Boyland, 16 Misc. 2d 58, 174 N.Y.S.2d 112 (Sup. Ct. 1958).

28. See People *ex rel.* Watchtower Bible and Tract Society Inc. v. Haring, 8 N.Y.2d 350, 170 N.E.2d 677, 207 N.Y.S.2d 673 (1961); Matter of Syracuse University, 124 Misc. 788, 209 N.Y. Supp. 329 (Sup. Ct. 1925); People *ex rel.* N.Y. Hosp. v. Purdy, 58 Hun 386, 12 N.Y. Supp. 307 (Sup. Ct. 1890).

for similar exemptions in a case where a corporation is formed specifically for providing residential facilities for these types of organizations) does not preclude an exemption under the statute in question and failure to claim these exemptions in prior years does not estop St. Lukes from a later claim for exemption.[29] On these bases, the court ultimately concludes that supplying living accommodations to hospital personnel and their families is a purpose reasonably incident to the major purpose of the hospital entitling St. Lukes to partial exemption.

The most important aspect of the instant case is the decision that a "free hospital" is one that does not charge for its services. The statute states that a "free public hospital" is entitled to property exemptions even though portions are used for non-hospital purposes, provided the income is applied to the support of the hospital. Today in New York there are few if any hospitals which do not charge for their services. Most hospitals charge at cost or, even above cost as in the case of private patients. As a result of this case, today's hospitals must be labeled as merely hospitals "within the statute." This means that they are only entitled to exemptions on property actually used for hospital purposes. The instant case has figuratively eliminated the words "free public hospital" from the statute. The elimination of the special exemption for free public hospitals, places hospitals in the same category as other charitable organizations under the statute. In the early ninteenth and twentieth centuries, hospitals were private enterprises and needed these special exemptions because they had no means of support except charitable contributions and many patients could not afford medical care. These conditions are not prevalent today. In many cases, state and local authorities provide financial support for these organizations. The development of social and public concern for these institutions has, in part eliminated the pressing need for private funds. Medical insurance plans, such as Blue Cross and Blue Shield, make it easier for patients to pay medical expenses. Contemplated federal government medical care for the aged, should also ease the patient's inability to pay. Thus the special exemption geared to the needs of the nineteenth century, has become outmoded in the light of present day social and insurance developments and has been justifiably eliminated.

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TORTS

MAINTENANCE OF ABANDONED HOUSE IN STATE OF DISREPAIR NOT BASIS FOR ABSOLUTE LIABILITY

Infant plaintiff entered defendant's abandoned house to retrieve his baseball glove thrown through an open window by other boys, fell from an open window and was injured. The house was scheduled for demolition and had been

29. See Cruger v. Dougherty, 43 N.Y. 107 (1870).